

The House Committee on Judiciary offers the following substitute to SB 25:

A BILL TO BE ENTITLED

AN ACT

To amend Chapter 5 of Title 19 of the Official Code of Georgia Annotated, relating to divorce, so as to require certain divorcing parents to participate in certain education classes that focus on the effect of divorce and separation on children; to provide for legislative findings; to provide for the types of persons who can provide the education; to provide for exceptions to the education classes; to change certain provisions relating to the time limit for granting a divorce on the ground that the marriage is irretrievably broken; to provide for a different time frame for granting divorce based on certain circumstances; to provide for related matters; to provide for an effective date and applicability; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 5 of Title 19 of the Official Code of Georgia Annotated, relating to divorce, is amended by striking subsection (a) of Code Section 19-5-1, relating to granting total divorces and referral for alternative dispute resolution, and inserting in lieu thereof the following:

"(a) Total divorces may be granted in proper cases by the superior court; provided, however, that the parties shall comply with Code Section 19-5-1.1 if it is applicable. Unless an issuable defense is filed as provided by law and a jury trial is demanded in writing by either party on or before the call of the case for trial, in all petitions for divorce and permanent alimony the judge shall hear and determine all issues of law and of fact and any other issues raised in the pleadings."

SECTION 2.

Said chapter is further amended by inserting a new Code section to read as follows:

"19-5-1.1.

(a) The General Assembly finds that children are the innocent victims of legal separation and divorce and that, when two parties separate or divorce, there is a devastating impact on their children who have had no voice in the decision to disrupt the family. Oftentimes, these children of divorce are negatively affected academically, socially, emotionally, and psychologically as a result of the stress and trauma placed on the family by the separation or divorce and by the associated discord between their parents occasioned by the process. The General Assembly finds that severe emotional trauma to the children can have short-term and long-term negative effects on these children. The General Assembly finds that education may benefit parties considering legal separation or divorce by educating them about the short-term and long-term negative effects that such a decision may have on their children. Accordingly, the General Assembly determines and declares that it is in the best interests of the children, families, and citizens of the State of Georgia to require that, in most cases, parties to a legal separation or divorce proceeding filed pursuant to this chapter or Chapter 6 of this title who have minor children of the marriage or who are expecting a child undertake, prior to the taking of a final decree of divorce, education classes focusing on the current and future potential negative impact on children of separation or divorce.

(b)(1) Except as otherwise provided in subsection (d) of this Code section, in proceedings pursuant to this chapter in which there are minor children of the marriage or in which the wife is pregnant, the court shall order the parties seeking legal separation or divorce to participate in education classes approved by the court as provided in Uniform Superior Court Rule 24.8, which focus substantially on the potential impact of separation or divorce on children. The court may order such education classes for divorcing stepparents if the court determines such education is warranted under the circumstances of the case.

(2) If ordered to complete educational classes, the parties shall complete such education classes prior to obtaining a final decree for divorce.

(3) The education classes shall be provided to parties in each judicial circuit by one or more of the following:

(A) A marriage and family therapist, social worker, or professional counselor licensed pursuant to Chapter 10A of Title 43 or psychologist licensed pursuant to Chapter 39 of Title 43;

(B) A therapist exempt from licensure pursuant to paragraph (5) or (6) of subsection (b) of Code Section 43-10A-7 or paragraph (5) of Code Section 43-39-7 who is acting under the supervision of a licensed marriage and family therapist, licensed psychologist, licensed social worker, or licensed professional counselor;

1 (C) A physician who is licensed pursuant to Chapter 34 of Title 43;

2 (D) A clinical nurse specialist; or

3 (E) An active member of the clergy when in the course of his or her service as clergy
4 or his or her designee, including retired clergy, provided the clergy member or designee
5 is trained in the impact that separation or divorce has on children.

6 (4) Persons providing the education classes may use the curriculum developed within
7 each judicial circuit or by the Georgia Composite Board of Professional Counselors,
8 Social Workers, and Marriage and Family Therapists or such other curriculum that
9 focuses specially on the impact of legal separation and divorce on children.

10 (5) The education classes shall be completed prior to the final decree of divorce and shall
11 consist of a minimum of three hours, unless the parties reconcile prior to completion of
12 the education classes. Counseling in which the parties have participated at any time
13 within six months prior to the filing of the petition for legal separation or divorce shall
14 also count toward the hourly requirements set forth in this paragraph, if such counseling
15 focused substantially on the potential impact on children of separation or divorce. The
16 parties may individually elect to participate in the education classes together or
17 separately. Whether the parties participate in the education classes together or separately,
18 each party shall participate for a minimum of three hours.

19 (6) After a party has completed the education classes, the person providing the education
20 classes shall provide the participating party with a certificate of completion or a letter of
21 verification or some other written documentation indicating completion of the education
22 classes. The person providing education classes may also provide to the party a list of
23 resources for mental health counseling, marital counseling, child counseling, and other
24 support services that may be available in the community to the party and the party's
25 children.

26 (7) The court may either provide for indigent parties to complete the education classes
27 required by this Code section or may waive such requirement.

28 (c) The parties may elect to attend the education classes together unless one of the
29 following circumstances exist:

30 (1) A protective order has been issued against one of the parties pursuant to Article 1 of
31 Chapter 13 of this title;

32 (2) There have been allegations of violence within the marriage; or

33 (3) One of the parties prefers to attend the education class without his or her spouse.

34 (d) The court shall not require the education classes prescribed in subsection (b) of this
35 Code section if:

(1) Service of process was satisfied by publication and the whereabouts of one of the parties cannot be determined;

(2) One of the parties to the marriage at the time of the action is incarcerated;

(3) The youngest child of the parties is within six months of his or her eighteenth birthday;

(4) One of the parties to the proceeding does not live in this state;

(5) The parties have been living separate and apart for more than two years; or

(6) Good cause is shown to the court justifying a waiver.

(e) If the petition for legal separation or divorce is not dismissed, the costs, if any, associated with the education classes required by subsection (b) of this Code section shall be paid by the participating parties in accordance with a schedule of costs as determined by an order in each judicial circuit."

SECTION 3.

Said chapter is further amended by striking paragraph (13) of Code Section 19-5-3, relating to grounds for divorce, and inserting in lieu thereof the following:

"(13) The marriage is irretrievably broken. Under no circumstances shall the court grant a divorce on this ground until not less than 30 days from the date of service on the respondent and as further provided in Code Section 19-5-3.1."

SECTION 4.

Said chapter is further amended by inserting a new Code section to follow Code Section 19-5-3, relating to grounds for divorce, to read as follows:

"19-5-3.1.

(a) Except as provided in subsection (b) of this Code section, where the parties have minor children of the marriage, a court shall grant a divorce only after 120 days from the date of the parties' legal state of separation.

(b) The waiting period provided by this Code section shall be waived where:

(1) Either party has obtained a protective order pursuant to Article 1 of Chapter 13 of this title;

(2) Either party submits a confidential affidavit to the court for in camera inspection, a verified petition for legal separation or divorce, a verified answer, or a verified responsive pleading, which alleges specific facts establishing probable cause that family violence as defined by Code Section 19-13-1 has occurred in the past; or

(3) The parties present a settlement agreement that satisfies the court that the principles of collaborative practice have been utilized. As used in this paragraph, the term

1 'collaborative practice' means a procedure in which the parties and their respective
2 attorneys agree in writing to use their best efforts and make a good faith attempt to
3 resolve their divorce on an agreed basis without resorting to judicial intervention except
4 to have a court approve the parties' settlement agreement and sign all orders required to
5 effectuate the divorce and settlement agreement. The parties' attorneys may not serve as
6 counsel at any trial for divorce between the parties. 'Collaborative practice' also means
7 that the parties and their respective attorneys have entered into a written agreement that
8 the parties:

9 (A) Will resolve the issues of the divorce and all other issues related to the divorce
10 without the need for a trial;

11 (B) Agree that if a trial is needed their respective attorneys will withdraw from the
12 case;

13 (C) Will voluntarily disclose to each other all pertinent facts; and

14 (D) Agree that any expert needed to assist the parties in negotiations will not be able
15 to be called as a witness in any trial involving the parties."

16 **SECTION 5.**

17 This Act shall become effective on January 1, 2007. This Act shall apply only to causes of
18 action arising on or after January 1, 2007. Any cause of action arising prior to that date shall
19 continue to be governed by the laws in effect at the time such cause of action arose.

20 **SECTION 6.**

21 All laws and parts of laws in conflict with this Act are repealed.